IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1024 OF 2003

Allahabad Bank Employees Union)
(Maharashtra) A Trade Union Employees)
registered under Trade Unions Acts,)
1926 having office at Allabad Bank)
37, Mumbai Samachar Marg, Fort,)
Mumbai-400 023.)..PETITIONER

Versus

1. Allahabad Bank, through its)
Chairman and Managing Director)
having office at 2, Netaji Subhash)
Road, Kolkata-700 001.)
2. General Manager, Allahabad Bank,)
Regional Office, Manish Commerical)
Centre, 216, A, Dr. Annie Besant)
Road, Mumbai-400 025.)
3. The General Secretary, All India)
Allahabad Bank SC/ST Employees)
Welfare Council, C/o. Allahabad)
Bank, Parel Branch, Dr. Ambedkar)
Marg, Mumbai-400 012.)

4. The Vice President, Allahabad Bank)

Karmachari Sena, C/o.Allahabad)

Bank Bombay Samachar Marg, Fort,)

Mumbai-400 023.)..RESPODNENTS

Mr. A.K. Jalisatgi with Mr. Anmol B. Desai for Petitioners

Mr. Jaiprakash Sawant, for Respondent NO.4.

CORAM: F.I. REBELLO J.

DATE : 16th December, 2004

ORAL JUDGMENT:

. The petitioners is trade union registered under the provisions of the Trade Unions Act, 1926. It is their contention that they represent almost all the employees employed with the respondent No.1 bank within the area of their functioning. The respondent No.1 bank has for the purpose of administrative convenience formed various regions and zones. For each such Region, a union of employees is registered. The petitioner is registered for Maharashtra (except Vidarbha and Marathawada) and Goa Region. All such Unions including the petitioners have formed Committee known as All India Allahabad Bank Employees Co-Ordination Committee for facilitating collective bargaining at an all India level. Each Unit/Union in every Region sends one representative to the Co-Ordination Committee. The office bearers of the Co-Ordination Committee are elected by the delegates of each

Regional Union. The Co-Ordination Committee is formed by all the Regional Unions functioning in the Respondent No.1 Bank. The Co-Ordination Committee has the status of sole bargaining agent of the workmen employed with the Respondent No.1. In that capacity they have signed various settlements with the management of the respondent No.1. One of such settlements was signed on 3rd March, 1990 which pertained to the transfer of employees employed with the respondent No.1. Rotational transfers came to be introduced as a part of the conditions of service. The employees who had completed nearly 5 years in a branch or office were to be transferred by rotation. Taking into consideration the pivotal role played by the office bearers of the Co-Ordination Committee and of the Regional Unions, including the petitioners in maintaining peaceful industrial relations, it was agreed that no such office bearers will be transferred without their consent. A subsequent settlement came to be entered into on 22nd March, 2001 in the matter of transfer. Certain modifications were introduced in the earlier settlement dated 3rd March, 1990. By the new settlement a ceiling was put on the maximum number of office bearers who would be exempted from rotational transfer. It was stipulated that office bearers of the affiliated Units of the Co-Ordination Committee on the basis of 1% of their membership strength with the minimum of three and maximum of twenty five in the respective State will be transferred by their consent. This settlement continued to be in force.

2. It is the case of the petitioners that they were shocked when the General Manager, H.O., of Respondent NO.1 gave to the All India General Secretary of the Co-Ordination Committee, a copy of an Award dated 11th October, 2002 passed by the Presiding Officer of the Central Government Industrial Tribunal No.3, Mumbai in Reference NO.CGIT-2/90 of 2000. It is the contention of the petitioners that by the Award the learned Industrial Tribunal has held that the action of the Respondent No.1 of not transferring the office bearers of the petitioners amounts to violation of transfer policy and is totally unjustified. The Tribunal further directed the Respondent No.1 to effect transfer of all award staff including the office bearers of the petitioner union. It is the case of the petitioners that they apprehend that the Respondent No.1 would effect transfers based upon the award. They are, therefore, compelled to file the present Writ Petition.

3. The points urged for consideration are as under:-

(a) Can an Industrial Tribunal constituted under the Industrial Disputes Act cancel, rescind or set aside the terms of a valid and subsisting settlement signed between the employer and the workmen represented by a recognised union at the instance of another Union which was not a party to the settlement.

(b) Can an Industrial Tribunal pass an Award/Order

prejudicial to a party which has entered into a subsisting settlement which is subsisting without issuing notice to them of the proceedings and giving them an opportunity to be heard.

(c) Whether the Award of the Industrial Tribunal impugned in the petition is obtained by fraud by the Respondent and consequently non-est and cannot be sustained in law.

4. The respondent Nos. 1 and 2 though served have failed to put in any appearance. The respondent Nos. 3 and 4 are appearing through their learned Counsel. On behalf of the respondent Nos. 3 and 4, it is firstly contended that the settlement is no settlement in the eyes of law, as it was not entered into between a recognised union and respondent No.1. The Co-ordination Committee, it is set out, is not an Union within the meaning of the Trade Union Act. It is secondly contended that it is impermissible for the respondent No.1 which is a State within the meaning of Article 12 of the Constitution to enter into a settlement which discriminates in the matter of transfer. The settlement, if any, is clearly against the Constitutional provisions. In the instant case the Government of India has a policy of transfer. The respondent No.1 was bound to follow that policy. It is, therefore, contended that this Court ought not to interfere with the award of the Industrial Tribunal.

5. From the petition and as per the averments of the petitioner, there is a valid and subsisting settlement entered

into between the petitioner and the respondent No.1. There is a further contention that the petitioner represents the majority of the workmen for the area for which it is registered and employed with the respondent No.1. The existence of the settlement dated 3rd March, 1990 and 2nd March, 2001 is not disputed by respondents 4 and 5, as can be seen from the averments in paragraph 11 of the affidavit in reply. The stand is that the settlement was signed with an unregistered body. Once, therefore, there is a settlement between the Union representing the majority of the workmen it was not open to the learned Tribunal to give a go-bye to the said settlement. In so far as recognition is concerned, from the order of the Tribunal there is no finding recorded that the settlement between the petitioner and the Co-ordination Committee is not a settlement between the employer and the Union. The contention, therefore, advanced on behalf of the respondent Nos. 3 and 4 by the learned Counsel cannot be upheld in the absence of recording such a finding. Even otherwise it is debatable whether such a finding could be recorded in the absence of all parties to the settlement, being before the Industrial Tribunal. A settlement between the management and Union considering the provisions of Section 2(p), Section 12(3) and other provisions of the I.D. Act would be binding on the parties unless terminated. An Industrial Tribunal definitely cannot go into the issue of the validity of the settlement in the absence of parties to the settlement. The Award on that count is liable to be set aside.

6. The second issue of substantial importance may now be answered. An award based on a reference is binding only in the parties to the reference in terms of Section 18 (3) of the Industrial Disputes Act, 1947. The dispute culminating into an award, therefore, at the highest which was raised at the behest of the Allahabad Karmachari Sena would have been binding on the respondent No.1 and the members of the aforesaid Allahabad Bank Karmachari Sena, unless the other Unions who represent the workmen and who have entered into a settlement with respondent No.1 were summoned to appear in terms of Section 18(3) of the I.D. Act. That apparently was not done. Once that be the case at the highest even if the learned Industrial Court wanted to pass an award that Award could not have been to issue directions to respondent No.1 to effect transfers by holding that action of the management of Respondent NO.1 in not effecting rotational transfer of Award staff in Mumbai Region and keeping staff including office bearers of the union at one place for years together amounts to violation of transfer policy and is totally unjustified. Considering the provisions of Industrial Disputes Act, 1947 the transfer policy would be a transfer policy as contemplated under the terms of the settlement. Transfer is a condition of service. It is open to the respondent No.1 to set down the conditions of service. It is also open to respondent No.1 to enter into settlements with unions in the matter of variation or change in the terms and conditions of service. Once the settlements have been entered into, between the union and the

employer those settlements have to be accepted considering the provisions of Section 19 of the I.D. Act, 1947. Normally when a settlement has been entered into and another union disputes the said settlement on whatsoever ground the normal test that the Industrial Tribunal must apply is whether the settlement can be said to be unfair and answer the same accordingly. If it so holds then it can pas an award in terms of the reference. It cannot set aside a binding settlement. If the Tribunal proposes to by pass a settlement and if it has such jurisdiction then the least that has to be done is to notice the Union which entered into the settlement and thereafter give an opportunity to the said Union before making an award which according to it to be just and equitable. That has not been done in the instant case.

. The learned Counsel for the respondent Nos. 3 and 4, had contended that the respondent No.1 could not have effected transfer even by virtue of a settlement which is against constitutional principles. Reliance is placed on the judgment of a learned Single Judge of the Karnataka High Court in **K.Bhagavandas Rai v. Vijaya Bank and Ors., 1999 Lab.I.C. 1298**. In that case a circular was issued by the bank in the matter of transfer policy of office bearers of Trade Unions and some others. That was challenged. A learned single Judge of Karnataka High Court upheld the challenge on the ground that the action would be arbitrary, considering the regulations in force for transfer and those would have to be followed. It is not necessary for me to further advert to the

said judgment as it was not considering an issue of an existing settlement, but conditions of service made under Regulations, which would have been altered by amending the Regulations. Suffice it to say that there is nothing in law which prevents an employer if there be no law to the contrary, even if the employer falls within the meaning of State or other Authority under Article 12 of the Constitution of India to make a reasonable classification in the matter of transfer. Article 14 so permits as long as the classification is reasonable and has a nexus with the object which is sought to be achieved. The second contention must also be rejected.

In view of the above, the third contention need not be dealt with.

7. Having said so considering the issues raised to my mind the interest of justice would be met if the impugned award is set aside and the matter is remanded back to the Industrial Tribunal for reconsideration. If the Industrial Tribunal proposes to answer the issues on the matter of settlement entered into with the Co-ordination Committee and the respondent No.1 and/or to issue directions that the said settlement is not fair and, therefore, not binding or is constitutionally impermissible it would be bound to issue notice to the parties which entered into the settlement according to law.

8. Rule made absolute accordingly. There shall be no order as to costs.

(F.I.REBELLO, J.)